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Attorney Docket No.: 5974.210-US

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Poul Bach

Confirmation No: 4913

Serial No.: 10/777,335

Group Art Unit: 1654

Filed: February 11, 2004

Examiner: To be assigned

For: Method For Preparing An Enzyme Containing Granule

## RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-145

Sir:

This paper is filed in response to the Office Action mailed May 5, 2006 that made restriction and election of species requirements. Applicants were requested to elect one of four designated species, as follows:

Group I: Claims 1, 2 and 6-18, shell applied at least 7 days after preparing the enzyme core.

Group II Claims 1, 3 and 6-18, shell applied at least 1 to 7 days after preparing the enzyme core.

Group III Claims 1, 4 and 6-18, shell applied at least 1 to 7 days[sic] 1 to 52 weeks after preparing the enzyme core.

Group IV Claims 1, 5 and 6-18, shell applied 1 to 5 years after preparing the enzyme core.

In response to these requirements, Applicants hereby elect with traverse the species of Group III. Applicants hereby reserve the right to file continuing applications directed to the non-elected subject matter.

The Examiner's reasoning on page 4 for the species election is that *"a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group."*

It is certainly correct that a reference which anticipates or makes obvious one claim may not make obvious another claim. This is the very reason more than one claim is presented in an application. However, this reasoning cannot be a basis for invoking a restriction or species election requirement as patent practitioners are unquestionably permitted to submit claims having a different scope. The Examiner has conceded that claims 2, 3, 4 and 5 are part of the same invention, as claim 1 links all of the invention. These claims merely add additional limitations, permitted under U.S. patent practice.

Notwithstanding the above, Applicant's will accept the Examiner's statement on the record that the prior art against any one invention of Group 1, 2, 3 or 4 would not be applicable to another, and this reasoning should be applied to the subsequent examination of the case. However, Applicants respectfully submit that Groups 1-3 each include overlapping subject matter. In particular, claims 2, 3 and 4, which are the basis for three of the four identified species, all recite an invention in which the shell can be applied at day 7. It is respectfully submitted that this feature of the claims is common to each of claims 2, 3 and 4.

Thus, Applicants respectfully submit that neither the legal reasoning nor the factual reasoning for the election of species requirement is accurate.

The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this response or application.

Respectfully submitted,

Date: July 11, 2006



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